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Before the
Federal Communications Commission
Washington, D.C. 20554

JAN 13 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 76.51)
of the Commission's Rules to)
Include Newton, New Jersey in)
the Market Currently Designated)
the "New York, New York-Linden-)
Paterson-Newark, New Jersey")
Market)

MM Docket No. 93-290

To: Chief, Mass Media Bureau

REQUEST FOR TEMPORARY EMERGENCY RELIEF PENDING FINAL RULEMAKING

Respectfully submitted,

MOUNTAIN BROADCASTING
CORPORATION

M. Anne Swanson
Koteen & Naftalin
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Its Attorneys

January 13, 1994

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SUMMARY

Mountain Broadcasting Corporation ("Mountain"), petitioner in this rulemaking and licensee of WMBC-TV, which operates on Channel 63 in Newton, New Jersey, hereby seeks a temporary, emergency grant of this rulemaking with respect to Bergen, Essex, Morris, and Passaic Counties in northern New Jersey and without prejudice to any action the Commission may take with respect to the remainder of the New York ADI. Such relief is urgently needed to prevent TCI of Northern New Jersey ("TCI-NNJ"), which provides cable service to these four counties but did not oppose the rulemaking, from using this proceeding as a pretext to justify its recent action discontinuing carriage of WMBC-TV in violation of the 1992 Cable Act and the Commission's rules.

WMBC-TV began operations just last spring. When this docket commenced, the minority-controlled station was being carried on only four cable systems, including TCI-NNJ. Of the four systems, TCI-NNJ was by far the largest, with almost 200,000 basic subscribers or sixty percent of the cable homes reached by WMBC-TV. As one of WMBC-TV's market competitors, TCI-NNJ well knew of WMBC-TV's tenuous financial condition and the devastating effect deletion of WMBC-TV would have on the new station.

TCI-NNJ's action discontinuing WMBC-TV's carriage over its entire system came abruptly on December 31, 1993, with less than the thirty-day written notice required by the Commission's rules. TCI-NNJ had been carrying WMBC-TV on Channel 10 on its system and had not raised any copyright-related defense to its carriage of the station prior to the Commission's May 3, 1993 deadline for

such notice. Late last fall, however, TCI-NNJ suddenly claimed that it had discovered that WMBC-TV's signal was actually "distant" to almost forty percent of the system's service area. As a result, TCI-NNJ claimed that Mountain owed it \$339,804 in semi-annual copyright fees for continued carriage in this area. When Mountain responded that, given its limited resources as a fledgling station, it could not reimburse such an amount but still expected to be carried on the rest of the system, TCI-NNJ claimed that such partial carriage was impossible unless Mountain paid \$70,000 in unspecified engineering costs, interim expenses TCI-NNJ doubted Mountain would want to incur "given the pendency" of this proceeding. Even if Mountain were willing to pay, TCI-NNJ said, the engineering changes could not be made by January 1, 1994 when the next copyright accounting period began. Thus, TCI-NNJ said it had no choice but to drop WMBC-TV off its entire system by December 31, 1993.

The temporary, emergency grant of redesignation rights that WMBC-TV seeks is limited to only four New Jersey counties, all of which lie at least within WMBC-TV's Grade B contour. This relief will allow TCI-NNJ immediately to resume carriage of WMBC-TV without causing TCI-NNJ to incur copyright liability. Given the pendency of Mountain's rulemaking petition, which was not opposed by TCI-NNJ, the limited temporary relief sought by Mountain clearly provides the Commission with the most expeditious and equitable avenue to remedy TCI-NNJ's unconscionable actions in impermissibly deleting WMBC-TV from carriage on its very large system.

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To: Chief, Mass Media Bureau

REQUEST FOR TEMPORARY EMERGENCY RELIEF PENDING FINAL RULEMAKING

Mountain Broadcasting Corporation ("Mountain"), petitioner in the above-captioned rulemaking and licensee of television station WMBC-TV, which operates on Channel 63 in Newton, New Jersey, by its attorneys, hereby seeks a temporary and emergency grant of this rulemaking as it pertains to Bergen, Essex, Morris, and Passaic Counties in northern New Jersey. No cable operators serving these counties filed comments opposing this rulemaking by the December 20, 1993 deadline for initial comments. Indeed, of the three sets of opposition comments that were filed by cable operators, none objected to the proposed redesignation as it would affect cable systems in these four northern New Jersey counties. Nonetheless, as explained in detail below, in the last month, TCI of Northern New Jersey ("TCI-NNJ"), which provides service throughout the four counties but did not file comments, has used this rulemaking and related copyright issues as a pretext to cease carriage of WMBC-TV in violation of the Cable

Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act") and the Commission's rules.

In adopting rules to implement the 1992 Cable Act, the Commission provided that it would process market redesignation cases expeditiously.¹ Since then, the Commission has resolved several such cases in extremely prompt fashion.² Although in this case, the Commission did posit several complicating alternative solutions that may slow its resolution, none of the commenting parties has proposed that such alternative solutions apply in northern New Jersey in a manner that would prevent the temporary and emergency relief Mountain seeks. Thus, Mountain requests that the New York market be temporarily and immediately redesignated to include Newton, New Jersey but only with respect to Bergen, Essex, Morris, and Passaic Counties and without prejudice to any action the Commission may take with respect to the remainder of the New York ADI. Without such emergency relief, TCI-NNJ will be allowed to continue to take advantage of this pending rulemaking to circumvent its statutory and

¹ The expedited rulemaking procedures include issuance of a notice of proposed rulemaking based on the submitted petition without first seeking public comment on whether to do so. To expedite the process further, the FCC has authorized the Chief of the Mass Media Bureau to act on such petitions under delegated authority. Report and Order (MM Dkt. Nos. 92-259 et al.) ("Cable R&O"), 72 RR 2d 204, 223 & n.150.

² See, Report & Order (MM Dkt. 93-218), DA 93-1477, released Dec. 15, 1993; Report & Order (MM Dkt. No. 93-207), DA 93-1444, released Dec. 7, 1993; and Report & Order (MM Dkt. No. 93-233), DA 93-1429, released November 30, 1993, all of which progressed from Notice of Proposed Rule Making to Report and Order in five months or less.

administrative mandatory signal carriage obligations to the serious detriment of WMBC-TV, the public interest, and the integrity of the Commission's processes.

FACTUAL BACKGROUND

On June 14, 1993, Mountain filed a petition for rulemaking seeking amendment of Section 76.51 of the Commission's rules to add Newton, New Jersey, to the designation of the "New York, New York - Linden - Paterson - Newark, New Jersey" market. As the petition explained, WMBC-TV sought such redesignation in order to allow it to compete on an equal footing with other New York area television stations for programming, national and regional advertising, and viewing audiences. On November 16, 1993, the Commission, pursuant to its new rules for expedited processing and consideration of such requests, released a Notice of Proposed Rule Making ("NPRM") proposing such redesignation, finding that WMBC-TV had presented evidence establishing commonality between Newton and the New York City market as a whole and that the proposal was consistent with the agency's policies regarding redesignation of a hyphenated market.³ While the temporary relief Mountain seeks would affect only cable systems in four northern New Jersey counties, amendment of Section 76.51 on a permanent basis to include Newton, New Jersey in the designation of the New York City market would allow all cable systems in the

³ NPRM (MM Dkt. No. 93-290), DA 93-1349, released Nov. 16, 1993, at ¶ 13; 58 Fed. Reg. 62,085 (Nov. 24, 1993). The NPRM also proposed to include Riverhead, New York in the market designation in response to a petition for rulemaking filed by the licensee of WLIG-TV, Riverhead, New York on July 14, 1993.

New York ADI that are located within a thirty-five mile zone surrounding each named community in the hyphenated market to treat WMBC-TV as a "local" signal for copyright fee purposes. As a result, these cable systems could then carry WMBC-TV without incurring increased copyright fee payments.

As WMBC-TV explained in its petition for rulemaking, the station began broadcast operations last spring, following a tortuous seven-year long comparative hearing proceeding involving numerous challengers. That proceeding had found Mountain, the voting stock of which is owned entirely by Asian Americans, to be the superior applicant, comparatively best qualified to serve the public interest.⁴ At the time WMBC-TV's petition for rulemaking was filed, the station was being carried on only four cable systems, including TCI-NNJ, in the New York ADI.⁵ Of those viewers receiving WMBC-TV over the four cable systems, the vast majority were TCI-NNJ subscribers. In fact, TCI-NNJ had more

⁴ WMBC-TV began operations under program test authority on April 26, 1993. Initially, it operated with a reduced broadcast schedule; it commenced operation on a twenty-four hour basis on July 13, 1993. Mountain's qualifications had remained untarnished throughout the seven-year long proceeding. Bogner Newton Corp., 2 FCC Rcd 4792 (A.L.J. 1987), aff'd sub nom., Newton Television Ltd., 3 FCC Rcd 2561 (Rev. Bd. 1989), aff'd on recon., 5 FCC Rcd 2755 (1990).

⁵ The three other systems carrying WMBC-TV were Sammons Communications, Inc., in Dover, New Jersey; Panther Valley Service, Inc., in Allamuchy Township, New Jersey; and Service Electric in Sparta, New Jersey. These three systems continue to carry WMBC-TV.

subscribers than the other three northern New Jersey cable systems combined.⁶

By May 3, 1993, all cable systems in the New York ADI were required to notify WMBC-TV whether or not its right to carriage on their systems might be tempered because the station delivered an inadequate quality signal to the systems' principal headends or because carriage of WMBC-TV would subject the cable operators to additional copyright fee liability, for which Mountain was obligated to indemnify them. Mountain received such letters from a number of cable operators. As a fledgling station, however, WMBC-TV lacked the financial wherewithal to reimburse the cable systems for the almost \$9 million in increased semi-annual copyright fee payments the systems said they would incur by such carriage.⁷

In the case of TCI-NNJ, Mountain had written to the system on April 20, 1993 electing must-carry status for the WMBC-TV

⁶ According to the 1993 Television & Cable Factbook - Cable Systems, TCI-NNJ has 186,632 subscribers to its basic tier; Sammons has 93,281 basic subscribers; Panther Valley has 1,175; and Service Electric has 32,000. The four systems together have 313,628 subscribers. Thus, TCI-NNJ's subscribers represent 60 percent of the subscribers in northern New Jersey that receive WMBC-TV via cable.

⁷ Indeed, this staggering semi-annual copyright indemnification liability was one of the prime motivating factors behind Mountain's submission of its petition for rulemaking in this docket. In several instances, not relevant here, Mountain also received notices stating that it delivered an inadequate quality signal to cable headends. Mountain either has taken care of those problems, none of which involve large expenditures, or is continuing to work with the particular cable system to correct the asserted problems.

signal.⁸ By letter dated May 3, 1993, which was received by WMBC-TV on May 7, 1993, TCI of New York, Inc. provided Mountain with a schedule listing its various systems in the New York ADI. This schedule noted that carriage of WMBC-TV would not subject the TCI-NNJ system to increased copyright liability, although TCI-NNJ did allege certain signal quality problems.⁹ By letter dated June 2, 1993, TCI-NNJ advised WMBC-TV that it would be carried on its system and, on July 6, 1993, TCI-NNJ began

⁸ Letter of Sun Young Joo, General Manager, WMBC-TV, to Hank Magers, General Manager, United Artists Cable of New Jersey ("UA"), April 20, 1993, appended as Attachment A-1. TCI-NNJ acquired the system from UA.

⁹ Letter of Floyd Riddle, State Manager, TCI of New York, Inc. to WMBC, May 3, 1993 appended as Attachment A-2.

WMBC-TV's general manager was told orally that it would cost approximately \$2,000-\$3,000 to correct the signal quality problems. On May 28, 1993, Mountain wrote to TCI-NNJ expressing its willingness to pay these costs. (Letter of Sun Young Joo, General Manager, WMBC-TV, to Hank Magers, General Manager, UA, May 28, 1993, appended as Attachment A-3.) Despite its continued willingness to pay this amount, Mountain never received a bill from TCI-NNJ, a fact recently acknowledged by TCI-NNJ's counsel. (Letter of Steven J. Horvitz, counsel for TCI-NNJ, to Christopher G. Wood, counsel for WMBC-TV, January 11, 1994, appended as Attachment A-13.)

Not until the January 11, 1994 letter from TCI-NNJ's counsel, did the system provide WMBC-TV with any type of written cost estimate. The figures provided in the January 11, 1994 letter included a \$2,650 amount for an antenna, lead-in cable parts, and tower labor, all of which WMBC-TV will gladly pay if TCI-NNJ returns the station to carriage on Channel 10, where it had been carried as of December 31, 1993. The January 11, 1994 letter also listed \$13,200 in additional "non-extraordinary" cost items, of the type the FCC has made clear broadcasters have no obligation to cover. Clarification Order (MM Dkt. Nos. 92-259 et al.), 8 FCC Rcd 4142, 4144 (1993).

carrying WMBC-TV as a "must carry" signal.¹⁰ In short, at that point, TCI-NNJ waived any copyright-related defense to its obligation to carry WMBC-TV.

Much to Mountain's surprise, only four months later, TCI-NNJ sent Mountain a letter dated October 4, 1993, claiming that carriage of WMBC-TV would cost TCI-NNJ increased copyright fees because the system had suddenly determined that WMBC-TV was "not entirely local" to its cable system.¹¹ The letter claimed that WMBC-TV was located more than thirty-five miles from nineteen of the fifty-three communities served by TCI-NNJ, and thus WMBC-TV was a "distant" signal with respect to the nineteen communities.¹² Because these communities, including several in which WMBC-TV was actually only "partially distant," constituted thirty-nine percent of its system, TCI-NNJ claimed that WMBC-TV was liable for \$339,804.00 per accounting period in increased copyright liability. TCI-NNJ's letter stated that if Mountain

¹⁰ Letter of Henry A. Magers, State Manager, to General Manager, WMBC-TV, June 2, 1993, appended as Attachment A-4.

¹¹ Letter of Henry A. Magers, State/System Manager, to Rev. Sun Young Joo, Oct. 4, 1993, appended as Attachment A-6. The only intervening correspondence from TCI-NNJ was an August 9, 1993 letter notifying Mountain that TCI-NNJ was rearranging its channel line-up and was moving WMBC-TV from Channel 95 to Channel 10. Letter of Gary Shaw, Community Affairs Coordinator, to Mr. Sun Young Joo, General Manager, WMBC-TV, August 9, 1993, appended as Attachment A-5.

¹² The nineteen communities are spread among several northern New Jersey counties. Attachment B sets forth a complete list of the communities served by TCI-NNJ, notations as to those where the system alleged WMBC-TV would be a "distant" signal, and an indication as to which communities are actually only "partially distant."

was willing to indemnify TCI-NNJ for this amount, WMBC-TV would remain on its system in the nineteen communities. "Otherwise, we will need to delete WMBC-TV from these areas," the October 4, 1993 letter stated.¹³

Given its limited financial resources, Mountain responded that it could not indemnify TCI-NNJ for carriage on its system in the communities that TCI-NNJ deemed "distant."¹⁴ With respect to all other communities on the system, Mountain noted that it still remained entitled to carriage and reserved the right to request carriage on the portion of the TCI-NNJ system in the non-local communities should WMBC-TV's copyright status change in the future.

On December 7, 1993, in violation of the Commission's thirty-day written notice requirement, TCI-NNJ notified Mountain that effective December 31, 1993, it would delete WMBC-TV from carriage on its entire system.¹⁵ In response to inquiries from

¹³ In fact, carriage of WMBC-TV in communities where it is only "partially distant" would not cause TCI-NNJ to incur additional copyright liability. Under the Commission's former must carry rules, a broadcast station was entitled to mandatory carriage if its 35-mile specified zone covered the cable community "in whole or in part." See, e.g., § 76.59(a)(1) (1976). Thus, TCI-NNJ would incur no additional copyright liability for carriage of WMBC-TV in any community located wholly or partially within 35 miles of Newton. See 17 U.S.C. § 111(d), (f).

¹⁴ Letter of Christopher G. Wood, counsel for WMBC-TV, to Henry A. Magers, State/System Manager, October 29, 1993, appended as Attachment A-7.

¹⁵ Letter of Henry A. Magers, State/System Manager, to Rev. Sun Young Joo, December 7, 1993, appended as Attachment A-8.

(continued...)

WMBC-TV's counsel concerning the possibility of partial carriage,¹⁶ TCI-NNJ's attorney stated that it would cost roughly \$70,000.00 in unspecified engineering expenses to accommodate that request and program some but not all parts of its system to carry WMBC-TV.¹⁷ Its attorney further noted that "[g]iven the pendency of [the] market redesignation petition," he questioned whether Mountain would want to incur the engineering costs associated with such an interim solution. Even if Mountain expressed a willingness to incur the engineering costs, TCI-NNJ's attorney stated that the changes could not be implemented before commencement of the next copyright accounting period on January 1, 1994; thus, TCI-NNJ claimed to have no choice but to drop WMBC-TV's signal in all communities before that deadline. Despite an additional request for information from Mountain's counsel, which went substantively unanswered, TCI-NNJ discontinued carriage of WMBC-TV on December 31, 1993, less than thirty

¹⁵(...continued)

Section 614(b)(9) of the 1992 Cable Act, 47 U.S.C.A. § 534(b)(9), and Section 76.58(a) of the Commission's rules, 47 C.F.R. § 76.58(a), require 30 days' written notice from a cable system to a television station prior to any deletion or channel repositioning. Section 76.58(a) of the Commission's rules also requires the same notice to subscribers before such changes may be implemented. See also 47 C.F.R. § 76.309(c)(3)(A)(2). TCI-NNJ's counsel did provide oral notice of the discontinuance more than thirty days before it occurred. Oral notice, however, does not comply with the explicit requirements of the Commission's rules.

¹⁶ Letter of Christopher G. Wood, counsel for WMBC-TV, to Henry A. Magers, State/System Manager, December 13, 1993, appended as Attachment A-9.

¹⁷ Letter of Steven J. Horvitz, counsel for TCI-NNJ, to Christopher G. Wood, counsel for WMBC-TV. December 22, 1993, appended as Attachment A-10.

days after it had given written notification of such discontinuance to WMBC-TV. With this action, TCI-NNJ removed WMBC-TV from the majority of the cable homes where it was being carried.¹⁸

ARGUMENT

In adopting its rules to implement the 1992 Cable Act, the Commission made clear that May 3, 1993, was the deadline for cable operators to notify stations otherwise entitled to mandatory carriage that such carriage might not be automatic because the stations' status as "distant" signals resulted in increased copyright royalty fees which the stations had to agree to reimburse.¹⁹ Subject to several exceptions not relevant here, local commercial television stations that did not receive such notice,

¹⁸ The subsequent letters between counsel to TCI-NNJ and Mountain are appended as Attachments A-11, A-12, and A-13. Not until the final letter, which is dated January 11, 1994, did TCI-NNJ make any attempt to respond to the substantive questions WMBC-TV's counsel had raised.

Mountain recognizes that it would be entitled to file a complaint pursuant to Section 76.61 of the Commission's rules on the basis of TCI-NNJ's unauthorized discontinuation of carriage of WMBC-TV. Given the 120-day period for resolution of such complaints, this procedure is unlikely to provide the emergency, temporary relief so urgently required by WMBC. Moreover, a grant of such a complaint would require TCI-NNJ to resume carriage of WMBC-TV and would force TCI-NNJ to incur any resultant copyright liability. The emergency, temporary relief now sought by Mountain, on the other hand, would allow TCI-NNJ immediately to resume carriage of WMBC-TV without causing TCI-NNJ to incur any such copyright liability. Given the pendency of Mountain's rulemaking petition, which was not opposed by TCI-NNJ, the limited temporary relief sought by Mountain clearly provides the Commission with the most expeditious and equitable avenue to remedy TCI-NNJ's unconscionable actions in impermissibly deleting WMBC-TV from carriage on this very large cable system.

¹⁹ Cable R & O, 72 RR 2d at 218-19. See also 47 C.F.R. § 76.58(d).

as well as those that did receive a notice but pledged indemnification for the increased copyright fees, became entitled to mandatory carriage on June 2, 1993.²⁰ As the Commission also stated in adopting its new cable rules, the 1992 Cable Act clearly required that all "must carry" signals were to be provided to every subscriber of the cable system.²¹

Having failed to meet the May 3, 1993 deadline for objecting to carriage of WMBC-TV for reasons related to copyright liability, TCI-NNJ became obligated to make the station's signal available to all its subscribers. This TCI-NNJ did but only until December 31, 1993 when it used this rulemaking to avoid its obligation to carry WMBC-TV. This circumvention of its statutory duties is apparently premised on the theory that, during the pendency of this expedited rulemaking process, Mountain is probably unable and unwilling to pay the undocumented and questionably high engineering costs that TCI-NNJ has posited are necessary to effect carriage of WMBC-TV on only part of its system. This callous disregard of its statutory and Commission obligations by TCI-NNJ should not be countenanced.

The temporary and emergency grant of redesignation rights that WMBC-TV seeks is limited to only four New Jersey counties -- Bergen, Essex, Morris, and Passaic -- all of which are adjacent or very close to Sussex County, where Newton is located. WMBC-TV places a city-grade signal over all of Morris and Passaic Coun-

²⁰ Cable R & O, 72 RR 2d at 218-19.

²¹ Id. at 219.

ties. Most of the affected Essex County communities are also within WMBC-TV's city grade contour. Even many of the affected Bergen County communities lie within the station's city grade or Grade A contours; at worst, all the Bergen County communities are encompassed within in WMBC-TV's Grade B contour.²²

This temporary relief would remove any obligation on TCI-NNJ's part to pay increased copyright fees for transmission of WMBC-TV and, therefore, would eliminate any pretext for TCI-NNJ's discontinuation of carriage of WMBC-TV. In several orders issued in rehyphenation cases just before the end of 1993, the Commission once again acknowledged the importance of synchronizing its rules with the compulsory license payment scheme and also acknowledged its statutory authority to make such reconciliation.²³ The temporary and emergency relief that WMBC-TV seeks is consistent with these recent actions.²⁴

²² See WMBC-TV service area map appended at Attachment C.

²³ In these cases in which the FCC had already granted requests for market hyphenation, the Commission allowed the redesignation to become effective with less than 30 days' advance notice for "good cause," contrary to the customary practice under the Administrative Procedure Act. Order (MM Dkt No. 93-207), DA 93-1516, released Dec. 16, 1993; Order (MM Dkt No. 93-218), DA 93-1517, released Dec. 16, 1993; Order (MM Dkt No. 93-233), DA 93-1518, released Dec. 16, 1993.

²⁴ Grant of such relief, which will restore to WMBC-TV the rights it possessed before initiation of this docket, is also consistent with the course the Commission takes in considering requests for ADI modification. See Section 614(b)(1)(C)(iii), 47 U.S.C.A. § 534(b)(1)(C)(iii), which prohibits cable systems during the pendency of ADI modification proceedings, from deleting a television station's signal and, instead, requires that the systems maintain the status quo with respect to signal carriage. The strong Congressional bias in favor of mandatory signal carriage (continued...)

Despite its temporary and limited nature, Mountain's requested relief is critical to its survival as a market newcomer. The homes to which TCI-NNJ provided WMBC-TV numbered almost 200,000 or sixty percent of all cable homes receiving the station. Even before TCI-NNJ's unlawful action, WMBC-TV was experiencing difficulty attracting advertisers because of the small number of cable systems on which it was being carried. TCI-NNJ's action will make it virtually impossible for WMBC-TV to continue to compete with other more established local media outlets, such as TCI-NNJ, in attracting advertisers. As TCI-NNJ knows well, garnering additional advertising accounts is essential to WMBC's viability, no less to its growth and development.

In short, Mountain initiated this rulemaking to remove competitive inequities in the New York market. As is its custom, TCI-NNJ has increased the competitive inequities by taking advantage of Mountain's lack of resources and the pendency of this proceeding to cease carriage of WMBC-TV's signal in a manner that substantively and procedurally violates the 1992 Act and the Commission's rules.²⁵ Accordingly, Mountain respectfully

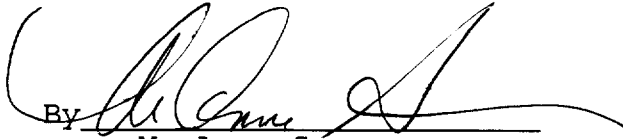
²⁴ (...continued)
requires that the Commission extend this policy to its expedited market redesignation proceedings as well, particularly when, as here, a cable operator like TCI-NNJ seeks to take unfair advantage of such a proceeding to avoid the "must-carry" obligations which it had conceded prior to commencement of the rulemaking.

²⁵ This case is yet another example of the apparently arrogant company-wide effort on the part of TCI-NNJ's corporate parent to evade compliance with the 1992 Cable Act. See Letter of Roy J. Stewart, Chief, Mass Media Bureau, to John C. Malone, President and (continued...)

requests that the Commission grant WMBC-TV its requested relief on a temporary and emergency basis in Bergen, Essex, Morris, and Passaic counties, thus requiring TCI-NNJ to resume carriage of WMBC-TV on Channel 10 as the system had been doing at the commencement of this docket and as the 1992 Cable Act and Commission rules require the system to continue to do.

Respectfully submitted,

MOUNTAIN BROADCASTING
CORPORATION

By 
M. Anne Swanson

of

Koteen & Naftalin
Suite 1000
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

Its Attorneys

January 13, 1994

²⁵(...continued)

Chief Executive Officer, Tele-Communications, Inc., Nov. 16, 1993, inquiring about TCI in-house memorandum that raised questions about the company's intent to comply with the 1992 Cable Act's rate regulation requirements, appended as Attachment D.

The letters appended as Attachment A are in chronological order and are labelled A-1 through A-13.



April 20, 1993

Mr. Hank Magers
UNITED ARTISTS CABLE OF NEW JERSEY
40 Potash Road
Oakland, NJ 07436

Dear Mr. Magers:

I am pleased to advise you that full power television station WMBC-TV will commence operations on UHF channel 63 at Newton, New Jersey, within the New York ADI, on or before May 2, 1992. Pursuant to Section 76.64(f) of the FCC rules, 47 C.F.R. Sec. 76.64(f), Mountain Broadcasting Corporation, the licensee of WMBC-TV, hereby elects must-carry status for its signal on the cable systems operated by your company in all communities within the New York ADI. While WMBC-TV would prefer to be carried on its over-the-air channel 63, we would be pleased to discuss with you the question of our channel assignment and will work with you to ensure the delivery of a good quality signal.

WMBC-TV will focus its programming on local interest within our area, including daily news and weather, regional sports, and community events featuring celebrities, politicians and local leaders. Our family-oriented format is designed to provide area viewers with alternatives in children's and teens' programming and premium-rated movies, as well as local coverage. WMBC-TV is affiliated with the American Entertainment Network and Family Network.

I am enclosing more information concerning our station. We're extremely excited about the concept of a local, commercial TV alternative in northern New Jersey and New York ADI. Accordingly, we are eager to work with your cable system to serve the community and our mutual business objectives. Please call me if you have any further questions concerning our station.

Sincerely,

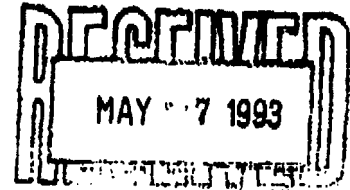
Sam Young Jon
General Manager

WJ/jes
enclosure

We're taking it
into tomorrow



TCL of New York, Inc.



BY CERTIFIED MAIL

May 3, 1993

WMBC
Mountain Broadcasting Corporation
6 Sparrow Circle
Newton, NJ 07860-1469

Dear General Manager:

Under the FCC's new must carry rules, we are required to notify you whether there is any signal quality problem or copyright liability affecting your station's potential must carry rights in any of our cable television systems which operate within your ADI. We believe, that in certain of our systems, either one or both of these conditions exist.

The attached Schedule of Systems (headends) provides the following information. If your station is currently carried on a system, there will be a notation of an "x" in the column titled "Carried." If our test of your signal, as it is received over-the-air at the principal headend of a system, has raised questions of its strength and/or quality, an "x" will appear in the column titled "Inadequate Signal." If we have determined that by carrying your station, a system may be subject to increased copyright liability, an "x" will appear in the column titled "Copyright Liability." An "x" in the column titled "Signal/Copyright" notates that both of these conditions exist.

It is our belief that either inadequate signal quality or copyright liability may adversely affect your must carry rights on these systems. If you have any questions, please contact me.

Sincerely,

Lloyd Riddle
State Manager *by*

Attachment(s)

State Office
100 Bigelow Avenue
Schenectady, NY 12301
(518) 370-4237

NY Group Operations

COMMERCIAL
SCHEDULE OF SYSTEMS

Cable Television Headend	Latitude	Longitude	Carried	Inadequate Signal	Copyright Liability	Signal/ Copyright
** WMBC						
OAKLAND [AML], NJ	040 56 46N	074 12 15W		X		
BROOKHAVEN, NY	040 50 34N	073 01 56W				X
KINGSTON [AML], NY	041 53 10N	073 58 37W				X
MAMARONECK [AML], NY	040 57 38N	073 55 23W			X	
MAMARONECK [AML] [NEW], NY						
POUGHKEEPSIE [AML], NY	041 42 00N	073 55 18W				X
WOODSTOCK [AML], NY	042 03 42N	074 06 22W				X



May 28, 1993

Mr. Hank Magers
General Manager
United Artists Cable of New Jersey
40 Potash Road, Oakland, NJ 07436

Dear Mr. Magers:

WMBC-TV desires to deliver a good-quality signal to the headend of United Artists Cable of N.J. located at Pompton Lakes, New Jersey. WMBC-TV's transmitting antenna is located at Sparta Township, N.J., and the distance from your tower of the above is about 15 miles.

WMBC-TV desires to attach its receiving antenna on the top of the tower which is 500 feet high. Mr. John Grider demanded to give you a letter of intent to pay the costs of materials and installation.

Therefore WMBC-TV intends, hereby, to pay the costs for mounting our channel 63 receiving antenna on the top of the 500 feet high tower owned by United Artists Cable of N.J. which is located at Pompton Lakes, N.J. The costs include cables, parts and installation. I will be appreciated, if you send me the reasonable estimate of the costs and the time schedule to do so.

If you have any questions, please call me at any time.

Sincerely,

A handwritten signature in black ink that reads 'Sun Young Joo'. The signature is written in a cursive, flowing style.

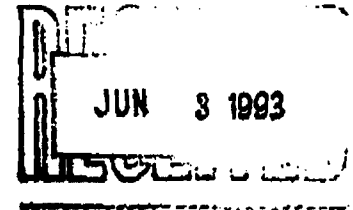
Sun Young Joo
General Manager

cc: John Grider, Technical Manager

We're taking television
into tomorrow.



TCI of Northern New Jersey



June 2, 1993

General Manager
WMBC-TV
Box 156, 500 Weldon Road
Lake Hopatcong, NJ 07849

Dear General Manager:

Under the FCC's new must carry rules, we are required to provide you with a list of all broadcast television stations carried by our cable television system, along with their channel positions. This listing includes must carry stations that have been, or soon will be, added.

I have enclosed a list of all of the stations carried, and their channel positions, for TCI of Northern New Jersey. The stations which we believe are must carry stations are marked with an asterisk.

If you have any questions, please contact me.

Sincerely,

TCI OF NORTHERN NEW JERSEY

A handwritten signature in cursive script, reading "Henry A. Magers", is written over the typed name.

Henry A. Magers
State Manager

HAM/lm

40 Potash Road
Oakland, New Jersey 07436
(201) 337-1550

An Equal Opportunity Employer



TCI of Northern New Jersey

Cable System Channel Line-Up Effective 7/5/93

Broadcast Basic Cable Channel

	<u>Station</u>	<u>City of License</u>
2	WCBS-TV	New York
4	WNBC-TV	New York
5	WNYW-TV	New York
7	WABC-TV	New York
8	WNJM-TV	Montclair, NJ
8	TC	Travel Channel
9	WWOR-TV	Secaucus, NJ
11	WPIX-TV	New York
12	WNYC-TV	New York
13	WNET-TV	Newark, NJ
19	Community Access	N/A
20	Community Access	N/A
95	WMBC-TV	Newton, NJ
96	WLIW-TV	Garden City, NY
98	WXTV-TV	Paterson, NJ
99	WNJU-TV	Linden, NJ

Expanded Basic Cable Channel

	<u>Network</u>	
3	CSN	C-SPAN
6	WTBS-TV	Atlanta
18	QVC	Shopping Network
22	EWTN	Eternal Word Television Network
23	LP	Local Programming
24	FAM	The Family Channel
25	CNBC	Consumer News & Business Channel
25	MSG	Madison Square Garden
26	TNT	Turner Network Television
27	USA	USA Network
28	AMC	American Movie Classics
28	HSN	Home Shopping
29	DSC	The Discovery Channel
29	CM	Cable Marketplace
30	TNN	The Nashville Network
31	ESPN	ESPN
32	CNN	Cable News Network
33	NIK	Nickelodeon
33	MSG II	Madison Square Garden II
34	LIF	Lifetime
35	TWC	The Weather Channel
36	MTV	Music Television
37	CTN	Cable Television Network of NJ

(continued on following page)

40 Polish Road
Oakland, New Jersey 07436
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